

KAZEROUNI LAW GROUP, APC
2700 N. Main Street, Ste. 1000
Santa Ana, California 92705

KAZEROUNI LAW GROUP, APC

Abbas Kazerounian, Esq. (SBN: 249203)
ak@kazlg.com

Matthew M. Loker, Esq. (SBN 279939)
ml@kazlg.com

2700 N. Main Street, Ste. 1000

Santa Ana, California 92705

Telephone: (800) 400-6808

Facsimile: (800) 520-5523

HYDE & SWIGART

Joshua B. Swigart, Esq. (SBN: 225557)

josh@westcoastlitigation.com

411 Camino Del Rio South, Suite 301

San Diego, CA 92108

Telephone: (619) 233-7770

Facsimile: (619) 297-1022

Attorneys for Plaintiff,

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**DAVID VACCARO,
INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS
SIMILARLY SITUATED,**

Plaintiff,

v.

**ONESTOPMOTORS.COM,
INC.,**

Defendant.

Case No.: '13CV1367 JAH RBB

CLASS ACTION

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF
PURSUANT TO THE
TELEPHONE CONSUMER
PROTECTION ACT, 47 U.S.C. §
227, ET SEQ.**

JURY TRIAL DEMANDED

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INTRODUCTION

1. DAVID VACCARO (“Plaintiff”) brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of ONESTOPMOTORS.COM, INC. (“Defendant”), in negligently contacting Plaintiff on Plaintiff’s cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”), thereby invading Plaintiff’s privacy. Plaintiff alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by their attorneys.
2. The TCPA was designed to prevent calls and messages like the ones described within this complaint, and to protect the privacy of citizens like Plaintiff. “Voluminous consumer complaints about abuses of telephone technology – for example, computerized calls dispatched to private homes – prompted Congress to pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).
3. In enacting the TCPA, Congress intended to give consumers a choice as to how creditors and telemarketers may call them, and made specific findings that “[t]echnologies that might allow consumers to avoid receiving such calls are not universally available, are costly, are unlikely to be enforced, or place an inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. Toward this end, Congress found that

[b]anning such automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call or when such calls are necessary in an emergency situation affecting the health and safety of the consumer, is the only effective means of protecting telephone consumers from this nuisance and privacy invasion.

Id. at § 12; see also *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL 3292838, at* 4 (N.D.Ill. Aug. 10, 2012) (citing Congressional findings on TCPA's purpose).

4. Congress also specifically found that “the evidence presented to the Congress indicates that automated or prerecorded calls are a nuisance and an invasion of privacy, regardless of the type of call....” Id. at §§ 12-13. See also, *Mims*, 132 S. Ct. at 744.

5. As Judge Easterbrook of the Seventh Circuit recently explained in a TCPA case regarding calls to a non-debtor similar to this one:

The Telephone Consumer Protection Act ... is well known for its provisions limiting junk-fax transmissions. A less-litigated part of the Act curtails the use of automated dialers and prerecorded messages to cell phones, whose subscribers often are billed by the minute as soon as the call is answered—and routing a call to voicemail counts as answering the call. An automated call to a landline phone can be an annoyance; an automated call to a cell phone adds expense to annoyance.

Soppet v. Enhanced Recovery Co., LLC, 679 F.3d 637, 638 (7th Cir. 2012).

JURISDICTION AND VENUE

6. This Court has federal question jurisdiction because this case arises out of violation of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740 (2012).

7. Venue is proper in the United States District Court for the Southern District of California pursuant to 18 U.S.C. § 1391(b) because Defendant is subject to personal jurisdiction in the County of San Diego, State of California.

PARTIES

8. Plaintiff is, and at all times mentioned herein was, a citizen and resident of the State of California. Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153 (10).

9. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and at all times mentioned herein was, a corporation whose State of Incorporation and principal place of business is in the State of Nevada. Defendant, is and at all times mentioned herein was, a corporation and is a “person,” as defined by 47 U.S.C. § 153 (10). Defendant is a website that buys, sells, and finances motorized vehicles. Plaintiff alleges that at all times relevant herein Defendant conducted business in the State of California and in the County of San Diego, and within this judicial district.

FACTUAL ALLEGATIONS

10. At all times relevant, Plaintiff was a citizen of the State of California. Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153 (10).

11. Defendant is, and at all times mentioned herein was, a corporation and a “person,” as defined by 47 U.S.C. § 153 (10).

12. At all times relevant Defendant conducted business in the State of California and in the County of San Diego, within this judicial district.

13. Beginning in April 2013, Defendant began contacting Plaintiff with an automatic telephone dialing system (“ATDS”) as defined by 47 U.S.C. § 227(a)(1) using an “artificial or prerecorded voice” as prohibited by 47 U.S.C. 227(b)(1)(A) in order to discuss the Defendant using Plaintiff’s services to sell Plaintiff’s vehicle.

14. On information and belief, Plaintiff did not provide Plaintiff’s cellular telephone numbers to Defendant through any medium at any time.

15. Between April 2013 and May 2013, Plaintiff has received multiple calls from Defendant where Defendant utilizes an “artificial or prerecorded voice” in conjunction with an ATDS.

16. During said telephonic communications, Defendant’s “artificial or prerecorded voice” stated:

1 Get the full amount that the vehicle is sold for. If you are truly
2 interested in getting that vehicle not only moved quickly but at
3 top dollar, please press [unclear] now. To have your number
4 added to our 'do not call' list, please press nine now.

5 17. Defendant obtained Plaintiff's contact information through unknown means.

6 18. Defendant's ATDS has the capacity to store or produce telephone numbers
7 to be called, using a random or sequential number generator.

8 19. The telephone number Defendant called was assigned to a cellular telephone
9 service for which Plaintiff incurred a charge for incoming calls and texts
10 pursuant to 47 U.S.C. § 227(b)(1).

11 20. These telephone communications constituted communications that were not
12 for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).

13 21. These telephone communications constituted telephone solicitations as
14 defined by 47 U.S.C. § 227(a)(4).

15 22. Plaintiff did not provide prior express consent to receive calls or messages
16 on Plaintiff's cellular telephones, pursuant to 47 U.S.C. § 227 (b)(1)(A).

17 23. These telephone communications by Defendant, or its agent, violated 47
18 U.S.C. § 227(b)(1).

19 **CLASS ACTION ALLEGATIONS**

20 24. Plaintiff brings this action on behalf of himself and on behalf of and all
21 others similarly situated ("the Class").

22 25. Plaintiff represents, and is a member of the Class, consisting of all persons
23 within the United States who received any unsolicited marketing and
24 artificial or prerecorded voice messages from Defendant without prior
25 express consent which message by Defendant or its agents was not made for
26 emergency purposes, within the four years prior to the filing of this action.

27 26. Defendant and its employees or agents are excluded from the Class.
28 Plaintiff does not know the number of members in the Class, but believes the
Class members number in the hundreds of thousands, if not more. Thus, this

1 matter should be certified as a Class action to assist in the expeditious
2 litigation of this matter.

3 27. Plaintiff and members of the Class were harmed by the acts of Defendant in
4 at least the following ways: Defendant, either directly or through its agents,
5 illegally contacted Plaintiff and the Class members via their cellular
6 telephones by using marketing and artificial or prerecorded voice messages,
7 thereby causing Plaintiff and the Class members to incur certain cellular
8 telephone charges or reduce cellular telephone time for which Plaintiff and
9 the Class members previously paid, and invading the privacy of said
10 Plaintiff and the Class members. Plaintiff and the Class members were
11 damaged thereby.

12 28. This suit seeks only damages and injunctive relief for recovery of economic
13 injury on behalf of the Class, and it expressly is not intended to request any
14 recovery for personal injury and claims related thereto. Plaintiff reserves the
15 right to expand the Class definition to seek recovery on behalf of additional
16 persons as warranted as facts are learned in further investigation and
17 discovery.

18 29. The joinder of the Class members is impractical and the disposition of their
19 claims in the Class action will provide substantial benefits both to the parties
20 and to the court. The Class can be identified through Defendant's records or
21 Defendant's agents' records.

22 30. There is a well-defined community of interest in the questions of law and
23 fact involved affecting the parties to be represented. The questions of law
24 and fact to the Class predominate over questions which may affect
25 individual Class members, including the following:
26
27
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- a) Whether, within the four years prior to the filing of this Complaint, Defendant or its agents initiated any calls utilizing artificial or prerecorded voice messages to the Class (other than a call made for emergency purposes or made with the prior express consent of the called party) to a Class member using any automatic telephone dialing system to any telephone number assigned to a cellular phone service;
- b) Whether Plaintiff and the Class members were damaged thereby, and the extent of damages for such violation; and
- c) Whether Defendant and its agents should be enjoined from engaging in such conduct in the future.

31. As a person that received at least one marketing and artificial or prerecorded voice message without Plaintiff's prior express consent, Plaintiff is asserting claims that are typical of the Class. Plaintiff will fairly and adequately represent and protect the interests of the Class in that Plaintiff has no interests antagonistic to any member of the Class.

32. Plaintiff and the members of the Class have all suffered irreparable harm as a result of the Defendant's unlawful and wrongful conduct. Absent a class action, the Class will continue to face the potential for irreparable harm. In addition, these violations of law will be allowed to proceed without remedy and Defendant will likely continue such illegal conduct. Because of the size of the individual Class member's claims, few, if any, Class members could afford to seek legal redress for the wrongs complained of herein.

33. Plaintiff has retained counsel experienced in handling class action claims and claims involving violations of the Telephone Consumer Protection Act.

34. A class action is a superior method for the fair and efficient adjudication of this controversy. Class-wide damages are essential to induce Defendant to comply with federal and California law. The interest of Class members in individually controlling the prosecution of separate claims against Defendant

1 is small because the maximum statutory damages in an individual action for
2 violation of privacy are minimal. Management of these claims is likely to
3 present significantly fewer difficulties than those presented in many class
4 claims.

5 35. Defendant has acted on grounds generally applicable to the Class, thereby
6 making appropriate final injunctive relief and corresponding declaratory
7 relief with respect to the Class as a whole.

8 **FIRST CAUSE OF ACTION**

9 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION**
10 **ACT**

11 **47 U.S.C. § 227 ET SEQ.**

12 36. Plaintiff incorporates by reference all of the above paragraphs of this
13 Complaint as though fully stated herein.

14 37. The foregoing acts and omissions of Defendant constitute numerous and
15 multiple negligent violations of the TCPA, including but not limited to each
16 and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

17 38. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq,
18 Plaintiff and The Class are entitled to an award of \$500.00 in statutory
19 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

20 39. Plaintiff and the Class are also entitled to and seek injunctive relief
21 prohibiting such conduct in the future.

22 **SECOND CAUSE OF ACTION**

23 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE**
24 **TELEPHONE CONSUMER PROTECTION ACT**

25 **47 U.S.C. § 227 ET SEQ.**

26 40. Plaintiff incorporates by reference all of the above paragraphs of this
27 Complaint as though fully stated herein.
28

1 41. The foregoing acts and omissions of Defendant constitute numerous and
 2 multiple knowing and/or willful violations of the TCPA, including but not
 3 limited to each and every one of the above-cited provisions of 47 U.S.C. §
 4 227 et seq.

5 42. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. §
 6 227 et seq, Plaintiff and The Class are entitled to an award of \$1,500.00 in
 7 statutory damages, for each and every violation, pursuant to 47 U.S.C. §
 8 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

9 43. Plaintiff and the Class are also entitled to and seek injunctive relief
 10 prohibiting such conduct in the future.

11 **PRAYER FOR RELIEF**

12 Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and The Class
 13 members the following relief against Defendant:

14 **FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF** 15 **THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- 16 • As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1),
 17 Plaintiff seeks for himself and each Class member \$500.00 in statutory
 18 damages, for each and every violation, pursuant to 47 U.S.C. §
 19 227(b)(3)(B).
- 20 • Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such
 21 conduct in the future.
- 22 • Any other relief the Court may deem just and proper.

23 **SECOND CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF** 24 **THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- 25 • As a result of Defendant's knowing and/or willful violations of 47 U.S.C.
 26 § 227(b)(1), Plaintiff seeks for himself and each Class member \$1,500.00
 27 in statutory damages, for each and every violation, pursuant to 47 U.S.C.
 28 § 227(b)(3)(B).

- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

TRIAL BY JURY

44. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: May 29, 2013

Respectfully submitted,

KAZEROUNI LAW GROUP, APC

By: /s Abbas Kazerounian
ABBAS KAZEROUNIAN, ESQ.
ATTORNEY FOR PLAINTIFF

KAZEROUNI LAW GROUP, APC
2700 N. Main Street, Ste. 1000
Santa Ana, California 92705